

2011 MAY -3 AM 10:50
SANDRA K MARKHAM ✓

JEANNE HICKS, CLERK

BY: **A CASCIO**

1 YAVAPAI COUNTY ATTORNEY'S OFFICE
2 Sheila Polk, SBN 007514
3 County Attorney
4 255 E. Gurley Street, 3rd Fl.
5 Prescott, AZ 86301
6 (928) 771-3344
7 ycao@co.yavapai.az.us
8 Attorneys for STATE OF ARIZONA

9
10 **IN THE SUPERIOR COURT**

11 **STATE OF ARIZONA, COUNTY OF YAVAPAI**

12 STATE OF ARIZONA,

V1300CR201080049

13 Plaintiff,

14 STATE'S RESPONSE TO DEFENDANT'S
15 MOTION TO PRECLUDE TESTIMONY OF
16 DR. KENT

17 vs.

18 JAMES ARTHUR RAY,

Expedited Ruling Requested

19 Defendant.

(The Honorable Warren Darrow)

20 The State of Arizona, by and through Sheila Polk, Yavapai County Attorney, respectfully
21 requests the Court to deny Defendant's Motion to Exclude Testimony of Dr. Kent. The State
22 noticed Dr. Kent as a trial witness on March 14, 2011, six weeks ago, and provided notice to
23 Defendant of his existence on November 19, 2010 during pre-trial discovery. Preclusion of a trial
24 witness who has relevant testimony is not a preferred sanction; this witness provides the
25 causation link between Defendant's sweat lodge ceremony in 2008 and that heat caused the
26 symptoms experienced by participants.

The State's position is more fully set forth in the attached Memorandum of Points and
Authorities.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

MEMORANDUM OF POINTS AND AUTHORITIES

The Facts

- On November 19, 2010, the State disclosed Dr. David Kent in its 18th Supplemental Disclosure in the lists of participants in Defendant's Spiritual Warrior seminars 2003-2008. (Bates 5621-5632)
- On Saturday, March 12, 2011, Dr. Kent sent an email to the Yavapai County Sheriff's Office setting forth information highly relevant to this case. This email was received and opened early on Monday morning, March 14, 2011. The State immediately disclosed the email to Defendant and added Dr. Kent to the State's Witness List.¹ *See Exhibit A, email from Dr. Kent dated March 12, 2011.*
- The State subsequently interviewed Dr. Kent, learned for the first time that he was a medical doctor, and immediately disclosed the interview to Defendant on April 4, 2011.
- Dr. Kent has been known to Defendant since 2008 as he was a participant in Defendant's Spiritual Warrior 2008 seminar. Dr. Kent has also been known to the defense since November 19, 2010, when disclosed in the State's 18th Supplemental Disclosure.
- Defendant has not requested to interview Dr. Kent at any time *or any witnesses from prior Spiritual Warrior events.*

.....

¹ Dr. Kent indicated in his interview that he had sent an email to the Yavapai County Sheriff's Office website contact, but such email was never discovered by the State.

1 **Argument**

2 **I. Causation**

3 It has been the State's intention to call Dr. Kent as a witness since March 14, 2011, when
4 the State first learned Dr. Kent is a medical doctor. Last week, this Court explained its ruling
5 concerning testimony in this trial about prior sweat lodge ceremonies conducted by Defendant.
6 Defendant submitted to the Court statements from interviews with Rick Haddow and Dr. Mosley
7 in support of his efforts to preclude further testimony concerning prior sweat lodge ceremonies.
8 The Court then expressed concern and indicated there will be no further testimony concerning
9 prior sweat lodge ceremonies conducted by Defendant absent expert testimony to clarify the link
10 between prior ceremonies and 2009.
11

12 Specifically, this Court expressed its opinion that there is no medical testimony linking
13 the events that occurred in prior years to the events in 2009. Dr. Lyons has stated that the
14 physical symptoms displayed by participants at prior sweat lodges is relevant to determining
15 cause of deaths in 2009.
16

17 Dr. David Kent will testify that he was a participant in Defendant's 2008 sweat lodge
18 ceremony; he is a medical doctor with 30 years total experience, and 20 years of practice as an
19 anesthesiologist; he has served in the Army and as a doctor for an Iron Man triathlon event; he is
20 familiar with altered states of consciousness due to his work as an anesthesiologist; and that
21 during and after Defendant's 2008 sweat lodge, Dr. Kent observed people who were "in
22 hyperthermic shock, absolutely heat stroked." Following is a summary of Dr. Kent's testimony
23 with references to the transcript of his interview:
24
25
26

- 1 • Prior to entering the sweat lodge, Defendant told participants they would feel like they
2 were going to die but will not die. (1)²
- 3 • Dr. Kent began to feel like he was starting to get into a dangerous temperature zone and
4 left the sweat lodge several times for short periods. Based on his medical training, he
5 understood the importance of not allowing himself to become comatose due to the heat.
6 (2)
- 7 • Dr. Kent observed that people were starting to come out on the breaks in increasing
8 degrees of distress, looking doughy and pale. (3)
- 9 • Beginning about 1/2 or 2/3 way through the ceremony, Dr. Kent became alarmed at the
10 condition of participants and decided to remain outside to assist. (4)
- 11 • Dr. Kent observed that the heat caused participants to pass out when they attempted to
12 stand up upon leaving the sweat lodge, due to loss of control of their vascular tone and
13 subsequent draining of blood away from the heart. (5)
- 14 • Several times, Dr. Kent informed staff and Dream Team members that “people die this
15 way.” (6)
- 16 • When the ceremony was over, Dr. Kent observed several participants who were semi-
17 conscious and not coherent. (7)
- 18 • Dr. Kent then gathered a few people together to search the tent for anyone remaining
19 inside. (8)
- 20 • Inside, they found two people lying there, very hot and unconscious. (9)
- 21 • Dr. Kent believes these two people would have died if they had not been pulled out and
22 aggressively cooled down. (10)
- 23 • Dr. Kent directed the care of these two participants, including directions that they remain
24 prone on the ground, cooled with water and monitored. (11)³
- 25 • Dr. Kent observed participants in varying degrees of critical distress and believes people
26 would have died if he had not been there to treat them. (12)

² Bullets 1-10 set forth on page 7, Transcript of interview of David Kent, M.D., April 4, 2011 (Bates 008072). *Ex. B*

³ Bullets 11-14 set forth on page 8-9, Transcript of interview of David Kent, M.D., April 4, 2011 (Bates 008073-4). *Ex. B*

- 1 • Dr. Kent observed people who were “in hyperthermic shock, absolutely heat stroked.”
2 (13)
- 3 • The conditions of the participants would have been cause for him to call a code and
4 proceed with aggressive resuscitation if encountered in a hospital room. (14)
- 5 • Dr. Kent further believes that participants did not appreciate how severe the situation was
6 due to their dysphoria and disorientation, and that participants pushed themselves to
7 endure the heat. (15)⁴
- 8 • Defendant told participants the purpose of the sweat lodge was to achieve an altered state
9 and that pushing oneself was part of the exercise. (16)⁵
- 10 • Dr. Kent observed that participants were in a state of heat stroke or close to heat stroke,
11 that six participants were in critical condition and ten more were in severe condition. Dr.
12 Kent was also worried someone would fall in the pit of heated rocks and get injured. (17)
- 13 • Dr. Kent observed participants suffering from “classic heat stroke to the point of
14 cardiovascular collapse and mental disorientation.” (18)⁶

15 Defendant has aggressively challenged causation in this case and this jury has heard
16 hours upon hours of cross-examination about wood, possible toxins, possible poisons, and other
17 possible theories to explain the deaths of the three victims. Dr. Kent’s testimony about his
18 personal observations about the participants in Defendant’s sweat lodge and the signs and
19 symptoms of heat-induced illnesses, **including his opinion that two participants would have**
20 **died of heat stroke if he had not treated them**, is directly relevant to this case.

21 **II. Rule 15.6, Arizona Rules of Criminal Procedure does not bar Dr. Kent testimony**

22 The State added Dr. Kent to the State’s Witness List on March 14, 2011. The Defendant
23 did not file this Motion to Preclude until April 28, 2011, **six weeks later**.

24 ⁴ Bullet 15 set forth on page 10, Transcript of interview of David Kent, M.D., April 4, 2011
(Bates 008075). *Ex. B*

25 ⁵ Bullets 16-17 set forth on page 11, Transcript of interview of David Kent, M.D., April 4,
26 2011(Bates 008076). *Ex. B*

1 Rule 15.6 applies to “material or information,” not to noticing of a trial witness. As this
2 Court is aware, the State has timely filed Rule 15.6 requests with regard to all new material the
3 State has sought to introduce. Defendant cites no case in support of its position that Rule 15.6
4 applies to witnesses previously disclosed to Defendant. The State first disclosed Dr. Kent on
5 November 19, 2010, and later added him to the List of Witnesses for trial on March 14, 2011.
6 There is simply no support for the argument that a Rule 15.6 motion is necessary.
7

8 **III. No prejudice to Defendant**

9 This Court has consistently ruled that testimony concerning prior sweat lodge ceremonies
10 performed by Defendant is relevant to the issue of causation. Defendant has always been on
11 notice that witnesses will testify about prior sweat lodge ceremonies conducted by Defendant.
12 For strategic reasons, Defendant chose not to interview any witnesses from prior sweat lodge
13 ceremonies, including Dr. Kent.
14

15 It has been the State’s intent to call Dr. Kent to the witness stand since March 14, 2011.
16 The Defendant has been on notice of this fact, yet only filed a Motion to Preclude on April 28,
17 2011, six weeks after receiving notice. Defendant can show no surprise or prejudice as a basis for
18 his Motion to Preclude.
19

20 **IV. Victims’ right to due process and a fair trial**

21 Article 2.1 of the Arizona Constitution states that the purpose of the Victims’ Bill of
22 Rights is to “*preserve and protect victims’ rights to justice and due process.*”
23
24
25

26 ⁶ Bullet 18 set forth on page 15, Transcript of interview of David Kent, M.D., April 4, 2011(Bates 008080). *Ex. B*

1 Defendant has focused much of this trial on other explanations for the cause of the death
2 of Kirby Brown, James Shore and Liz Neuman. Although lack of causation" was noticed by
3 Defendant in its 15.2 statement, no further information has ever been provided to the State.
4 During the eighteen months of pre-trial discovery that preceded this trial, Defendant never
5 "tipped its hand" on its theories of causation, never once asking witnesses about organo-
6 phosphates, rat poison, insecticides, pesticides, pressure-treated wood, or tarps, yet, at trial, hours
7 upon hours have been spent cross-examining witnesses on various alternate theories of causation.
8 It was not until after trial started that the State learned of the various theories Defendant claims
9 may have caused the deaths of the victims.
10

11 ☒ Through leading questions, Defendant has cross-examined medical witnesses about the
12 properties, and signs and symptoms, of organo-phosphate poisoning, yet never provided
13 any discovery to the State on this topic.
14

15 ☒ Through leading questions, Defendant has cross-examined witnesses about the
16 ingredients found in ant poison, yet never provided any discovery to the State on this
17 topic.

18 ☒ Through leading questions, Defendant has cross-examined witnesses about the
19 ingredients found in insecticides and pesticides, yet never provided any discovery to the
20 State on this topic.
21

22 ☒ Through leading questions, Defendant has cross-examined witnesses about the gasses
23 found in tarps, yet never provided any discovery to the State on this topic.
24
25
26

1 The constitutional rights of the victims to justice and due process are clear. Evidence that
2 is clearly relevant to cause of death should not be precluded. This jury is entitled to a full and fair
3 presentation of the facts, as are the victims.

4 **V. Preclusion is not an appropriate sanction for disclosure after the start of trial.**

5 Assuming, *arguendo*, that Defendant did not have notice of Dr. Kent, there is still no
6 legal precedent to preclude his highly relevant testimony. Rule 15.7, Ariz. R. Crim. P., sets forth
7 provisions for court-imposed sanctions for failure to make a disclosure required by Rule 15. "If
8 a sanction is warranted, it should have a minimal effect on the evidence and merits of the case.
9 *State v. Towery*, 186 Ariz. 168, 186, 920 P.2d 290, 308 (1996). "Prohibiting the calling of
10 witness should be invoked only in those cases where other less stringent sanctions are not
11 applicable to effect the ends of justice. *State v. Smith*, 140 Ariz. 355, 359, 681 P.2d 1374, 1378
12 (1984).
13
14

15 In *Smith*, the Arizona Supreme Court found it was reversible error for the trial court to
16 preclude the defendant from calling a witness in support of his alibi defense after he discovered
17 the witness, previously thought to be unavailable, was available to testify. The witness's
18 availability was discovered on the second day trial after the State had rested. The trial court
19 denied the defendant's motion to permit the witness to testify because he had not been disclosed
20 as a potential witness in this case. In reversing the decision of the trial court, the Court of
21 Appeals noted that "prior to precluding either party's witnesses, as a discovery sanction, the
22 court must make an inquiry into the surrounding circumstances." *Id.* at 359, 681 P.2d at 1378.
23 "The inquiry should determine if less stringent sanctions can be used." *Id.*
24

25 Included in the analysis is the determination of the following four criteria: "(1)
26 how vital the witness is to the case, (2) whether the opposing party will be

1 surprised, (3) whether the discovery violation was motivated by bad faith, and (4)
2 any other relevant circumstances.

3 *Id. citing State v. (Joseph Clarence, Jr.) Smith*, 123 Ariz. 243, 252, 599 P.2d 199, 208 (1979).

4 Similarly in *State v. Armstrong*, 208 Ariz. 345, 93 P.3d 1061 (2004), the Arizona
5 Supreme Court upheld the trial court's refusal to preclude a late disclosed witness. In *Armstrong*,
6 a co-defendant in the case took a plea just prior to the start of trial. The State then noticed the co-
7 defendant as a witness and the defendant moved to preclude him based on late disclosure. Noting
8 that the Court had "previously cautioned against preclusion of witness testimony," the Court
9 found no error and stated:

10
11 There is no doubt that preclusion would have been detrimental to the State's case;
12 [the witness] provided corroborating testimony about Armstrong's actions before,
13 during, and after the homicides. Additionally, the late disclosure was not
14 motivated by bad faith or willfulness.

15 *Armstrong* at 354, 93 P.3d at 1070.

16 In the instant case, Dr. Kent is a vital witness to the State's case. He provides the link the
17 Court has found lacking between the prior sweat lodge ceremonies and the signs and symptoms
18 observed by the witnesses and the medical expertise to confirm the cause was the exposure to
19 heat in the 2008 sweat lodge. Defendant has not been surprised by his testimony. Defendant has
20 known of Dr. Kent as he was a participant in the Spiritual Warrior 2008, the State disclosed his
21 existence on November 19, 2010, and noticed him as a trial witness on March 14, 2011. Dr. Kent
22 was disclosed immediately upon the State's discovery of his testimony and was not in anyway
23 motivated by bad faith. Finally, given Defendant's defense that something other than heat caused
24 the victims' death, Dr. Kent's testimony is directly relevant to rebut this defense.

1 The arguments by Defendant to preclude the highly relevant testimony of Dr. Kent
2 should be denied.

3 RESPECTFULLY submitted this 3rd day of May, 2011.
4

5
6 By [Signature] for
7 SHEILA SULLIVAN POLK
8 YAVAPAI COUNTY ATTORNEY

9 **COPIES** of the foregoing emailed this
10 3rd day of May, 2011:

11 Hon. Warren Darrow
12 Dtroxell@courts.az.gov

13 Thomas Kelly
14 tkkelly@thomaskellypc.com

15 Truc Do
16 Tru.Do@mto.com

COPIES of the foregoing delivered this
17 3rd day of May, 2011, to

Thomas Kelly
Via courthouse mailbox

Truc Do
Munger, Tolles & Olson LLP
355 S. Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560

Via Courthouse Mailbox

18 By: [Signature]

19 By: [Signature]

From: Liz Martz
Sent: Monday, March 14, 2011 7:40 AM
To: Ross Diskin
Subject: FW: DEATHS - James Ray Sweat Lodge 2009

Pls see email below

Liz Martz, Investigative Assistant
Yavapai County Sheriff's Office
Criminal Investigations Bureau
255 E Gurley St, Prescott AZ 86301
928-771-3278 Office
928-777-7343 Fax

This message is intended exclusively for the individual(s) or entity to which it is addressed. This communication may contain information that is law enforcement sensitive, for official use only, sensitive but unclassified, proprietary, privileged, and may be legally protected or otherwise exempt from disclosure. If you are not the intended recipient, you are hereby notified that any disclosure, dissemination, copying or distribution of this transmission is strictly prohibited. If you have received this message in error, please notify the sender immediately by email and immediately delete this message and all of its attachments.

From: Cathy David
Sent: Monday, March 14, 2011 7:35 AM
To: Tom S Boelts; Liz Martz
Subject: DEATHS - James Ray Sweat Lodge 2009

From: David Kent [mailto:dkentmd@shaw.ca]
Sent: Saturday, March 12, 2011 11:17 PM
To: web.sheriff
Subject: DEATHS - James Ray Sweat Lodge 2009

Hello Sir, or Madam;

I hear that these deaths are now the cause of serious charges against James Ray, and there is a large trial in Camp Verde.

I attended the 2008 Spiritual Warrior, and as a physician I was appalled at how dangerous the ceremony was. I warned nearly every volunteer there many ways, including "This is how people die". I did not warn James Ray personally, however. I wish I had now.

007814

3/14/2011

I saw several attendees who could have become critically ill I rallied the assistants to treat the heat stroke victims more aggressively, and at the end of the ceremony gathered a few of the stronger people and we went back inside the lodge and dragged out three more people who were unconscious and alone in the heat. With the chaos outside the lodge, I expect they would have been left there longer and died.

It is with some trepidation that I write, as I feel awful that I did not have a private meeting with James Ray and warn him of how stressful on the human body this lodge was.

David Kent, MD
dkentmd@shaw.ca
Work: 403-943-3410
Home: 403-202-2034
Cell: 403-815-9646
#1602, 318-26 Ave SW
Calgary, AB, T2S 2T9

Dr. Kent: And uhm it was actually I began to uh feel like I was starting to lose that I was getting into a dangerous temperature zone myself. I was starting to lose it so I began to take trips outside and yes we were encouraged to stay for the duration. He said you will feel like you're gonna die but you will not die. He says that's actually part of the exercise to feel like you're going to die. And I more or less just said as a medical man I'm not gonna go there. I'm not gonna allow myself to be rendered into a helpless state uhm you know a comatose state or something like that so I started to go out between every uhm every small story that he chanted in in some language and so I was taking frequent breaks and uhm doing my best to stay cool by laying very low. You know in a sauna you can see the higher up you go the quickly the hotter it gets? So I laid down and uhm after about uh the process was a little more than half done I more or less just said I'm gonna stay outside quite a bit. And people were starting to come out on the breaks in increasing degrees of distress. And uh they were coming out looking doughy, pale, some of them were being helped out as things got sort of $\frac{1}{2}$, $\frac{2}{3}$ the way through. I started to get quite alarmed and by the time things were $\frac{3}{4}$ through I said I'm gonna stay outside and help these helpers because they're not doing a very good job. People would come out and they'd start sprinkling them lightly with water and uh I was getting kind of aggressive with them saying look, hose them down. You know forget the, forget the uh pleasantries; hose them down, he's seriously hot. Or she is seriously hot and uh there were people who were passing out by virtue of being lifted up. Uh you know when they're that hot you lose control of your vascular tone and when you stand up all your blood just drains downwards and people were passing out. And I know from the type of medicine that I do that uhm you can actually end up with an empty heart. All the blood drains out of your upper body, including your heart and that can trigger a cardiac arrest as the heart tries to beat like an empty heart, like just like a pump with no fluid in it. And uhm and I started to become very concerned. I said lay him down, hose him down. And uh I was getting very, very severe and then the people were assuring me they knew what to do and I said look, I'm a doctor. People die this way. And uh as I became quite emphatic with some of these people towards the end I said several times to several of them look, people die this way. And uhm you know there was people who were who I was watching very closely cause they were absolutely obtunded and uhm you know I was kinda almost lining them up in a triage way and saying put them here and watch them. And then at the end people came out and a number of people walked out but they all looked rather shocked like a concentration camp being opened up and people shuffling out and collapsing and hosing themselves and drinking water. And those people I didn't worry about. There was the people still laying there that were pasty white and doughy and uh only semi-conscious and not making much sense. And as they were cooling down they were getting better and I looked around and pretty soon it looked like everybody was out and there was a few people who have enough wits about them, they were helping the others as well. And I gathered a few of them together and I said look we gotta go in and search the tent and we went in and the tent was absolutely empty except for two people laying there and it was still very, very hot. And I'm convinced I don't know how long they would have laid there but they were unconscious and in that hot, hot place and that they would have died if they didn't get attention right

away. And so I said drag them out, don't make them stand up, drag them out, lay them down and by then outside is all water, puddles and water. So just laying them down you know laid them in a puddle and uhm to me this was an absolutely shocking scene. It reminded me of this, like when one of these containers full of Mexican immigrants you know, people smugglers and some of those poor beggars have died in the heat.

Det. Diskin: Right

Dr. Kent: That we had just like, like part of a rescue operation. Break and open one of those things and all the people in there were in varying degrees of critical distress, it was, I just, I just, I completely couldn't see that this was a voluntary thing you know. People were just absolutely they're absolutely critical. And I feel like if I wasn't there some of them would have died. And uhm I can't quite remember what the best qualified person was. I think there was one nurse helping people but otherwise there were a few first aiders. And uh they they were in way over their head. These people were critically ill; they were in uh hyperthermic shock, absolutely heat stroked. And if they weren't basically healthy to begin with I'm sure some of them would have died that day. And uhm some of them would have died if it wasn't for you know me aggressively getting on to them and making sure they got treated and that I had got myself out of there before I actually became mentally uh incompetent. Uhm and uh as I tell you about this I can't believe that I didn't tell James Ray to his face but he was aloof and out of reach to us. You know he's always sort of been that way. He's uh whenever he mingles with people he's got two bodyguards on each side of him and uh kind of a very elite person. And he sort of said one of the uh one of the uh desirable things about Spiritual Warrior is as a small group you're closer to the master. And uhm uh so I didn't say anything to him. I never really had a chance to approach him, he actually doesn't let people approach him at the camp cause he doesn't want to be cornered and have people start asking questions and getting all deep into psychological whatever. And uh so really there was no one else to tell other than all his assistants and what I should have done is written you know him a registered letter afterwards and uh I've actually sat there and thought you know am I, am I culpable because I recognized how critically ill these people uh were on the verge of being. And uh and the fact that

Det. Diskin: It's interesting you say that cause we had doctors in the sweat lodge in 2009 and they felt the kinda the same way.

Dr. Kent: Yeah well there was no other medical people there in 2008 that I'm aware of. You know there might have been a nurse or two but nobody uhm uh with my experience and training and uhm I mean I absolutely recognize this. I mean if I walked into an operating room or a recovery room and saw something looking like they looked out there I would call a code. And uh you know call a code and proceed aggressive resuscitation. When someone is semi-conscious or unconscious for and it's not been medically induced something very, very serious is happening. And uh uhm I've actually I've actually been suffering a little bit from sort of a moral and ethical point of view that I recognized a

potentially lethal hazard and didn't do anything about it. And I and I think that the other people sort of naively didn't realize how severe it was. They just thought well I'm just way out there in deep space from this heat sauna and and that part of the suffering and some of the wailing and and crying that some people were doing cause they were so dysphoric and and uhm dysphoric and disoriented uh was sort of just part of the experience cause nobody really talked about it afterwards.

Det. Diskin: Nobody talked about the

Dr. Kent: How severe it was you know. Nobody really sort of said oh my God I'm never doing that again or you know boy it was scary seeing how all the people were.

Det. Diskin: Alright let me just go back to and ask a few questions. Uhm before you went in the sweat lodge do you remember the the briefing uh where James Ray told you what to expect or or you know what the sweat lodge was about?

Dr. Kent: Well it was very definitely encouraged to push yourself further than you've ever gone before. That was absolute.

Det. Diskin: Okay

Dr. Kent: He never said you cannot leave. It was one of those things where you know the uhm camaraderie of the group you don't want to leave, you know uh there was there was a lot of talk about commitment and it sort of reminded me very much of my Army days. You know where commitment to the group is so important and it's how successful Armies have always worked; commitment to your, your, your platoon; your platoon's commitment to your company, your company's commitment to your whole unit and so on and so on. Uhm so uh there was uh examples like uh we weren't forced to but we were told that you would show your commitment if you'd cut your hair off for example.

Det. Diskin: Right

Dr. Kent: And uh you know that was quite shocking for some Joe civilian, especially a woman to go and do. But a number of people did it as a sign of just how committed they were to rebuild their lives and change their lives with this uh exercise. Spent a lot of money to be there and uhm I you know this life changing event.

Det. Diskin: Right

Dr. Kent: And so there was uhm there was never any order you must not leave. He said no he said you can leave uhm if you need to but uh if you must do it between chants and uhm you know take your break and get back in there. You know and uh so it was one of those things where it wasn't uh wasn't quite duressed but uh there was incredible peer

pressure and uhm a sense of failing of uh sort of a little bit of a sense of failure if you went out and stayed out.

Det. Diskin: When you were telling people you know that this is this is heat stroke, this is bad uhm were you talking to the Dream Team members?

Dr. Kent: Well uhm I basically talked to everybody who was around outside helping. There was a few people that were identified as uhm aid workers for the uh you know aid as in first aid or experienced in sweat lodges uhm and then there was Dream Team members around as well. But they could be absolutely anybody you know. They could just be any individual and they were just more or less just told to help.

Det. Diskin: Okay

Dr. Kent: You know, take, take, give water to these people, help them out, rinse them down, whatever.

Det. Diskin: They were told by James Ray to do that or they were told by you to do that?

Dr. Kent: Uhm no, no, not by me uh they were just helpers. They were, they were already there with the intention of helping at the sweat lodge and uhm they were ready to some degree for uh you know people just being hot. They had prepositioned garden hoses, they had a, a uhm a large uhm table of drinks and uhm you know we could definitely drink we could drink all we wanted when we were outside and then get back in. Uhm I think what made it so dangerous is that people would be pushing themselves to you know to endure the heat and endure the heat and endure the heat and then they gradually crossed the line into uh uhm losing uh their sensibilities and no longer thinking straight and then right to the point of where you're so hot your vessels just open up so much that when you start to stand up you feel faint. And you maybe just lay back down again. And so there's people who had reached the point where they could no longer decide to come out and they'd lost control of themselves. Maybe you've been on survival courses or something; you may talk about hypothermia where you get cold.

Det. Diskin: Right

Dr. Kent: And you get too cold and you no longer think sensibly and you have to monitor yourself for that to happen. And uh you know it's all part of being a good survivalist, you don't let it get to that point where your brain starts to malfunction. Then, then you're done. And people just slipped into that zone where they could no longer uhm decide they'd better get out uhm just like somebody who just takes too much drugs. Takes more and more and more and they no longer realize they're taking too much and you know kids drink a whole fifth of whiskey

- Det. Diskin: Was it your impression that, that altered state or that that you know where you kind of drift off somewhere else, was it your understanding that that was the intent of the sweat lodge for you to reach (Inaudible)
- Dr. Kent: Yeah it was, it was (Inaudible) uh you know he says you might think you're gonna die but you won't. And you know it was presented that uh that this I mean there was several the breathing exercise was another sort of altered state exercise. And uhm that you know you reach an ability to communicate perhaps uh with the universe a bit better or something like that. You open channels to the universe, the energy of the universe. Uhm and that reaching this altered state was quite important you know. The, the uhm the combination of the chanting and the physiologic stress uh was going to actually lift you ultimately to a higher level after it was all over. So pushing yourself was absolutely part of the exercise.
- Det. Diskin: Okay how many people do you think were in some, some state of heat stroke or close to heat stroke?
- Dr. Kent: Uhm I'd say six were critical and about ten were uhm severe you know. It was that bad, it really was. I mean it was like at the worst of it just before the end and at the end uhm it looked like a, you know a trauma bay or something. People were half a dozen people lying down, half a dozen people sitting with that thousand yard stare. And uhm just out of it you know couldn't talk, couldn't answer questions.
- Det. Diskin: Okay and when you said that about halfway through is when you, you started taking breaks and going outside. Did you stay in for the, the first half?
- Dr. Kent: Uhm most of well about 1/3 of it and then I took a short break and then I started taking longer and longer breaks. I was taking like 30 second breaks, I'd go out there, I'd spray myself gulp down a glass of water and go back in.
- Det. Diskin: Okay and when you were leaving did James Ray say anything to you?
- Dr. Kent: No, no it just cause I did it during the uhm during the pauses
- Det. Diskin: Okay
- Dr. Kent: I sort of got ready and then I said okay go and I, I was really worried about that big damn hole full of rocks cause the light was very dim in there. And full of the hot rocks and I could just imagine that somebody make one bad step. Cause it was only about there's a all around the perimeter of the tent's where the people laid and sat and there were approximately two rows all the way around the perimeter, like two rings of people. And the inner ring, their feet were within a couple of feet of the pit so I could imagine somebody walking along, stepping on somebody's foot, doing a little dance and stepping into the fire pit or the rock pit and as soon as their hot, their foot hit that hot

of all there either but uh by the by the last quarter I was more or less back to normal and functioning cause I had been outside now for awhile and I'd sprayed myself down thoroughly and stayed wet. And it was a really hot day and it was really frickin' hot in there and uh I just and the fact that it had plastic on it I think was just the last straw. I mean one thing to be made out of buffalo hides and have air seeping in through gaps you know like the sort of original but

Det. Diskin: Do you think it would be possible for James Ray to come out of the sweat lodge and not see that people were in distress?

Dr. Kent: Oh oh heavens no,

Det. Diskin: Okay

Dr. Kent: heavens no. But I think that it was almost kinda like I mean what he typically did after every exercise, every teaching session, everything was just dash so as to not be available. To maintain his uhm separation, just like the captain of a ship has his own captain, cabin with no roommates and keeps a distance.

Det. Diskin: Uhm I've got some pictures in in front of me right now of the 2008 sweat lodge afterwards uhm right when it ended. There were some people taking pictures, I don't know if you knew that but do you think you would be able to look at the pictures and remember specifically what symptoms the people were suffering from or what they were doing?

Dr. Kent: Oh absolutely.

Det. Diskin: Okay

Dr. Kent: Sure and uh as I say I've described it and it would basically just be summarized as classic heat stroke to the point of cardiovascular collapse and uh and uhm mental disorientation.

Det. Diskin: Okay

Dr. Kent: But sure pictures would definitely jog my memory. I didn't know there's anybody taking pictures. I didn't think they were allowed to.

Det. Diskin: Yeah I guess they weren't but somebody did and they sent them to me. But

Dr. Kent: Oh you know there was no, no uhm there was no sense of uh this is not fun, this went too far. You know nobody was saying anything like that but if somebody took pictures of that and uh people are now saying these things, I guess uh uhm I guess I was not alone in that. Uhm to me the situation seemed like basically a recreational thrill that